



October 3, 2022

Ms. Maya van Rossum
Delaware Riverkeeper Network
925 Canal Street, Suite 3701
Bristol, PA 19007
dm@delawareriverkeeper.org

Dear Ms. van Rossum:

Thank you for your letter of September 16, 2022 outlining your concerns about residential development at the Navy Yard in the City of Philadelphia.

The Department of Environmental Protection (DEP) has been working collaboratively with the development entities, the City of Philadelphia, and the U.S. Navy for many years to facilitate the remediation, redevelopment and reuse of the Navy Yard in accordance with the laws and regulations governing the Act 2 program. While DEP is sensitive to the Delaware Riverkeeper Network's (DRN's) concerns and is open to the possibility of taking additional steps to enhance transparency and facilitate further public involvement at the Navy Yard, Act 2 does not require the resubmittal of the Notice of Intent to Remediate (NIR) for the project and thus no official Public Involvement Plan is required under the law. The development entities at the Navy Yard are engaged in regular communication with several Philadelphia City agencies and offices, who have not requested additional public involvement either during the publication of the original NIR or thereafter. The DEP hopes that the body of this letter will offer answers to the questions posed in your letter and explain how the process for instituting residential redevelopment at the Navy Yard is consistent with Act 2.

The 2001 NIR for the Navy Yard included residential and recreational uses as possible future anticipated uses of the property. The box for "residential" is checked and, under the heading "Proposed Remediation," the applicant wrote "the PNBC will be a mixed-use property, including commercial office, retail and industrial uses and although residential development is currently prohibited by deed restrictions, future development may include residential development if appropriate deed and environmental issues are satisfactorily addressed." Enclosed is the 2001 NIR for your reference. Thus, while the original Special Industrial Area Agreement (SIAA) governing initial cleanup measures at The Navy Yard does define the "Intended Purpose" of the initial phase of remediation, Paragraph 8 of that document explains that the development entities may change the Intended Purpose of the site upon written notice to DEP. Paragraph 8 also requires the development entities to remediate any contamination that would prevent occupation of the site for its new Intended Purpose. Under this framework, in 2015, the development entities expanded the Intended Purpose to include residential development as part of the Sixth Amendment to the SIAA (enclosed), at paragraphs F and 2. These provisions of the SIAA and its amendments are consistent with Act 2. Under the Act 2 regulations governing the Special Industrial Area standard, remediators are authorized to change the intended use of the remediated

property from non-residential to residential. 25 Pa. Code § 250.503(e) states, “[a] person that changes the use of the property from nonresidential to residential, or changes the use of the property to create substantial changes in exposure conditions to contamination that existed prior to the person’s reuse shall notify DEP of the changes and may be required to implement a remediation plan to address any new imminent, direct or immediate threats to human health and the environment resulting from the changes.” Paragraph 8 of the SIAA derives its authority from this unambiguous regulatory provision.

Further, as your letter correctly notes, under the SIAA, the Navy remains ultimately responsible for cleaning up the contamination at the Navy Yard. Recognizing this, the Navy included restrictions against residential use in the deeds for the Navy Yard parcels that were transferred to the development entities at the outset of the project. Since then, the Navy, the development entities and their counsel, and DEP have agreed upon a process to remove the residential deed restrictions from certain properties at the Navy Yard upon a demonstration that those properties have been remediated to a point where they are safe for residential use. This process is memorialized in a May 28, 2019 letter from Southeast Regional Counsel Andy Hartzell to development entity counsel Jonathan Rinde (enclosed).

This process was formulated with great care, with the goal of protecting human health and the environment at its core. Under the normal procedure for remediation of contaminated sites under the Special Industrial Area provision, remediators are not required to submit a Final Report to DEP. The DEP and the development entities agreed to include this additional requirement to ensure that the residential use project areas are remediated to the residential use standards. The Final Report will require demonstration of attainment of an Act 2 standard for residential use, and DEP will hold that report to the same exacting standards as it would at any other Act 2 site in the Commonwealth.

Since the 2001 NIR contemplated future residential use of properties at the Navy Yard, the current progress towards implementing the first phase of residential redevelopment does not present a change that would require resubmission of the NIR and a reopening of the public involvement process with the City of Philadelphia (City); NIRs do not expire. It should also be noted that the City declined to request a Public Involvement Plan at the Navy Yard when the NIR was first published in 2001, and the City has not asked DEP for any additional public involvement measures since then. However, DEP recognizes the importance of the Navy Yard redevelopment to many public, private, and citizen stakeholders, and is therefore open to innovative solutions that would provide added levels of transparency and accountability at the Navy Yard. DEP publishes notices of receipt of Act 2 reports in the *Pennsylvania Bulletin*, and we are willing to provide copies of reports concerning the residential development to DRN. Although there is no formal public involvement plan for the site, DEP always considers any comments submitted by the public that are pertinent to Act 2 requirements.

Additionally, DEP is currently negotiating a Seventh Amendment to the SIAA. Though there are no public notice or comment requirements for Consent Orders and Agreements, such as the SIAA, one provision of the Seventh Amendment would require the development entities to submit to DEP and regularly update a comprehensive map of the Navy Yard, showing Act 2 boundaries at the site and ownership, remediator, and developer identification information for

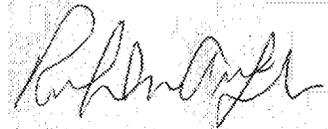
each parcel, and identifying areas that are subject to special provisions of any past or subsequent amendments to the SIAA. This comprehensive map will be made available to the public at DEP's Southeast Regional Office, and it can be shared directly with DRN upon request. The DEP would be glad to discuss these and other options with you, as it recognizes the benefits of enhanced transparency for the public around this project. If you would like to arrange a meeting with DEP to further discuss the Act 2 process at the Navy Yard, please contact Patrick Patterson, DEP's Southeast Regional Director, by telephone at 484.250.5942.

It is important to note that land use and development at the Navy Yard are controlled by the City and the U.S. Navy. The DEP cannot interfere with local land use decisions. The DEP's role in the Navy Yard redevelopment is strictly limited to approval or denial of any Act 2 reports submitted to DEP regarding remediation activities at the site.

Finally, regarding PFAS impacts at the Navy Yard, PFAS is not part of the Act 2 remediation, but the U.S. Navy has begun investigations of several areas with suspected PFAS impacts both at parcels transferred to development entities and at Navy-retained parcels. PFAS concentrations in groundwater have been found to exceed applicable standards at several locations. This work is still in progress and is reviewed by both DEP and U.S. EPA. Ingestion of contaminated drinking water is not a complete exposure pathway at the Navy Yard, as there are no potable supply wells on the property or in the vicinity. The investigation reports can be accessed from DEP's records.

Thank you for communicating your concerns about this development. We hope this letter has adequately addressed your concerns.

Sincerely,



Robert M. DiGilarmo II
Acting Deputy Secretary

Enclosures